



ARKANSAS JUDICIARY

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Rule 11. Signing Of Pleadings, Motions, And Other Papers; Sanctions.

(a) *Signature.* Every pleading, written motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his or her individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his or her pleading, motion, or other paper and state his or her address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit.

(b) *Certificate.* The signature of an attorney or party constitutes a certificate by the signatory that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) the pleading, motion, or other paper is not interposed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support;

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information;

(5) when a party's claim or affirmative defense may only be established in whole or in part by expert testimony, the party has consulted with at least one expert, or has learned in discovery of the opinion of at least one expert, who (i) is believed to be competent under Ark. R. Evid. 702 to express an opinion in the action and (ii) concludes on the basis of the available information that there is a reasonable basis to assert the claim or affirmative defense; and

(6) the pleading, motion, or other paper complies with the requirements of Rule 5(c)(2) regarding redaction of confidential information from case records submitted to the court.

(c) *Sanctions.* (1) If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon any attorney or party who violated this rule an appropriate sanction.

(2) Sanctions that may be imposed for violations of this rule include, but are not limited to:

- (A) an order dismissing a claim or action;
- (B) an order striking a pleading or motion;
- (C) an order entering judgment by default;
- (D) an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee;
- (E) an order to pay a penalty to the court;
- (F) an order awarding damages attributable to the delay or misconduct;
- (G) an order referring an attorney to the Supreme Court Committee on Professional Conduct or the appropriate disciplinary body of another state.

(3) The court's order imposing a sanction shall describe the sanctioned conduct and explain the basis for the sanction. If a monetary sanction is imposed, the order shall explain how it was determined.

(4) The court shall not impose a monetary sanction against a represented party for violating subdivision (b)(2), on its own initiative, unless it issued the show-cause order under subdivision (c)(6) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(5) A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5 but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or such other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion.

(6) On its own initiative, the court may order an attorney or party to show cause why conduct specifically described in the order has not violated subdivision (b). The order shall afford the attorney or party a reasonable time to respond, but not less than 14 days.

Comment Text:

Reporter's Notes to Rule 11: 1. With minor changes, Rule 11 is substantially identical to FRCP 11. Omitted from Rule 11 is the provision in the Federal Rule which abolished the old equity rule as to quantum of proof required where an answer is under oath. Arkansas has not followed this rule; therefore, there is no need to have a provision which abolished it.

2. Superseded Ark. Stat. Ann. 27-1105 (Repl. 1962) required that a complaint, answer and reply be verified. Under Rule 11, only those few pleadings and motions specifically required by these rules to be verified need be verified. Under this and the Federal Rule, verification of pleadings is the exception and not the rule.

3. Under FRCP 11, the signature of an attorney to a pleading amounts to an affirmation that he believes the pleading to have merit. *Russo v. Sofia Bros., Inc.*, 2 F.R.D. 1 (D.C. N.Y., 1941). It is a breach of an attorney's duty to file pleadings which create issues that counsel does not believe to have basis in fact. *Arena v. Luckenbach Steamship Co.*, 279 F.2d 186 (C.C.A. 1st, 1960).

4. Omitted from Rule 11 are the words "as sham and false" found in FRCP 11. These words do not add any particular import to the rule, hence their omission. Also, the word "served" as used in FRCP 11 has been deleted and the word "filed" substituted therefor.

Addition to Reporter's Note, 1986 Amendment: - Rule 11 has been completely rewritten. It is now substantially identical to Federal Rule 11, as amended in 1983. As adopted in 1979, Arkansas Rule 11 was virtually identical to its federal counterpart, providing for the striking of pleadings and imposition of disciplinary sanctions to check abuses in the signing of pleadings. Experience under original Rule 11 in the federal courts demonstrated that the rule was not effective in deterring abuses, and confusion existed as to the circumstances that could trigger striking a pleading or taking disciplinary action, the standard of conduct expected of attorneys who sign pleadings and other papers, and the range of available sanctions. The amended rule is intended to reduce the reluctance of the courts to impose sanctions by emphasizing the responsibilities of the attorney and reenforcing those obligations by the imposition of sanctions.

As amended, Rule 11 expressly applied to pleadings, motions, and other papers. It therefore includes discovery requests, discovery motions, and any other paper that must be filed and served under Rule 5, Ark. R. Civ. P. Moreover, amended Rule 11 provides that, in addition to disciplinary sanctions, the trial judge may impose other sanctions upon an offending attorney, including a reasonable attorney's fee for the opposing party. The assessment of attorney's fees for violation of procedural rules is currently found in other Rules of Civil Procedure, e.g., Rules 37(a)-(d), 56(g), and 26(b) & (c).

Amended Rule 11 states that the signature of an attorney constitutes a certificate by him "that to the best of his knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law." This language is substantially stronger than in the former rule. In addition, the recently adopted Arkansas Rules of Professional Conduct emphasize that a lawyer may not ethically bring or defend a proceeding or an issue unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. See Rule 3.1, Arkansas Rules of Professional Conduct.

Under the former version of Rule 11, the signature of an attorney certified that the suit or

motion was not interposed for purposes of delay. The new rule is broader in stating that the pleading, motion or other paper "is not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." This provision is consistent with the newly adopted ethical rules. For example, Rule 3.2 of the Arkansas Rules of Professional Conduct provides that a lawyer "shall make reasonable efforts to expedite litigation consistent with the interest of the client."

Addition to Reporter's Notes, 1997 Amendment: - The rule has been amended by designating the former text as subdivision (a) and by adding new subdivision (b), which is based [on] Rule 11(c) (1) of the Federal Rules of Civil Procedure, as amended in 1993. In addition, the second sentence of subdivision (a) has been revised to require a party not represented by counsel to provide his telephone number, if any, along with his address. New subdivision (b) provides that requests for sanctions must be made as a separate motion, rather than simply be included as an additional prayer for relief in another motion. The motion for sanctions is not to be filed until at least 21 days, or other such period as the court may set, after being served. If the alleged violation is corrected during this period, the motion should not be filed with the court. This provision is intended to provide a type of "safe harbor" against motions under Rule 11 in that a party will not be subject to sanctions on the basis of another party's motion unless, after receiving the motion, it refuses to withdraw that position or to acknowledge candidly that it does not currently have evidence to support a specified allegation.

To emphasize the seriousness of a motion for sanctions and to define precisely the conduct claimed to violate the rule, the new subdivision provides that the "safe harbor" period begins to run only upon service of the motion. In most cases, however, counsel should be expected to give informal notice to the other party, whether in person or by a letter or telephone call, of a potential violation before proceeding to prepare and serve a Rule 11 motion.

Addition to Reporter's Notes, 2008 Amendment: Subdivision (a) has been amended by adding a new element to the certifications made by a pro se party or an attorney when that person signs a pleading, motion, or other paper. The attorney or party is now also certifying compliance with Administrative Order 19's mandate for redaction of necessary and relevant confidential information in the case record being filed. The incorporation of Administrative Order 19's mandate here gives the circuit court a ready method for enforcing this mandate.

Addition to Reporter's Notes (2015 amendment): The amendment reorganizes and clarifies the rule. Several revisions are based on language in Ark. R. App. P. Civ. 11, which applies when frivolous appeals are taken or other misconduct occurs at the appellate level. Other changes are based on Fed. R. Civ. P. 11, but overall this rule differs significantly from its federal counterpart.

With the adoption of these revisions, section 21 of the Civil Justice Reform Act of 2003, codified at Ark. Code Ann. § 16-114-209, is superseded pursuant to Ark. Code Ann. § 16-11-301. The Supreme Court invalidated a portion of the statute in *Summerville v. Thrower*, 369 Ark. 231, 253 S.W.3d 415 (2007).

Subdivision (b) of the revised rule, which describes the certification made by the person who signs a pleading, motion, or paper, does not substantially change current law. It is based on the federal rule but modified to reflect the requirement of fact pleading under the Arkansas rules. Also, subsection (b)(5) makes plain that an attorney or a party certifies that he or she has consulted with and obtained an opinion from an expert, or learned the opinion of an expert in discovery, as to the reasonableness of a claim or affirmative defense, which may

only be established, in whole or in part, by expert testimony. This provision replaces the affidavit requirement for medical injury cases invalidated in *Summerville v. Thrower, supra*, but is not limited to cases of that type.

As under former Rule 11(a), subdivision (c)(1) requires the trial court to impose ?an appropriate sanction? upon finding that the rule has been violated. Subdivision (c)(2) sets out a non-exclusive list of seven sanctions, six of which are identical or analogous to those in Ark. R. App. P.?Civ. 11(c). The other sanction, referring counsel to the Committee on Professional Conduct, is clearly within the power of the trial court. See *Ligon v. Stilley*, 2010 Ark. 418, 371 S.W.3d 615. The introductory clause in subdivision (c)(2) is taken from Ark. R. App. P.?Civ. 11(c) and does not limit a sanction to that sufficient to serve as a deterrent. Compare Fed. R. Civ. P. 11(c)(4) (sanction ?must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated?).

In *Crockett & Brown v. Wilson*, 321 Ark. 150, 901 S.W.2d 826 (1995), the Supreme Court held that an order imposing monetary sanctions under Rule 11 must explain the basis for the trial court?s decision. This requirement, the court said, is necessary for effective judicial review. *Id.* at 159, 901 S.W.2d at 830. Because this rationale applies whether the sanction is monetary or nonmonetary, subdivision (c)(3) requires an explanation regardless of the sanction imposed. It also leaves intact the additional requirement from *Crockett & Brown* that the order must explain the manner by which the amount of a monetary sanction is determined. *Id.* at 159, 901 S.W.2d at 830?31 (listing the factors to be considered).

Under former Rule 11(a), the trial court could act ?upon its own initiative? to impose sanctions, without waiting for a motion. However, the rule was silent as to the appropriate procedure. Subdivision (c)(6), which is based on Ark. R. App. P.?Civ. 11(d), fills this gap. See also Fed. R. Civ. P. 11(c)(3).

History Text:

History. Amended July 1, 1986, effective September 15, 1986; amended November 18, 1996, effective March 1, 1997; Amended October 23, 2008, effective January 1, 2009; amended February 26, 2015, effective April 1, 2015.

Associated Court Rules:

Rules of Civil Procedure

Group Title:

III. Pleadings and Motions

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